

1-1 By: Ellis S.B. No. 1682
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 14, 2011, reported favorably by the following vote: Yeas 6,
1-5 Nays 1; April 14, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the creation of managed assigned counsel programs.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Article 26.04, Code of Criminal Procedure, is
1-11 amended by amending Subsection (a) and adding Subsection (f-1) to
1-12 read as follows:

1-13 (a) The judges of the county courts, statutory county
1-14 courts, and district courts trying criminal cases in each county,
1-15 by local rule, shall adopt and publish written countywide
1-16 procedures for timely and fairly appointing counsel for an indigent
1-17 defendant in the county arrested for or charged with a misdemeanor
1-18 punishable by confinement or a felony. The procedures must be
1-19 consistent with this article and Articles 1.051, 15.17, 26.05, and
1-20 26.052. A court shall appoint an attorney from a public appointment
1-21 list using a system of rotation, unless the court appoints an
1-22 attorney under Subsection (f), (f-1), (h), or (i). The court shall
1-23 appoint attorneys from among the next five names on the appointment
1-24 list in the order in which the attorneys' names appear on the list,
1-25 unless the court makes a finding of good cause on the record for
1-26 appointing an attorney out of order. An attorney who is not
1-27 appointed in the order in which the attorney's name appears on the
1-28 list shall remain next in order on the list.

1-29 (f-1) In a county in which a managed assigned counsel
1-30 program is operated in accordance with Article 26.047, the managed
1-31 assigned counsel program may appoint counsel to represent the
1-32 defendant in accordance with guidelines established for the
1-33 program.

1-34 SECTION 2. Chapter 26, Code of Criminal Procedure, is
1-35 amended by adding Article 26.047 to read as follows:

1-36 Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In
1-37 this article:

1-38 (1) "Governmental entity" has the meaning assigned by
1-39 Article 26.044.

1-40 (2) "Managed assigned counsel program" or "program"
1-41 means a program operated with public funds:

1-42 (A) by a governmental entity, nonprofit
1-43 corporation, or bar association under a written agreement with a
1-44 governmental entity, other than an individual judge or court; and

1-45 (B) for the purpose of appointing counsel under
1-46 Article 26.04 or Section 51.10, Family Code.

1-47 (b) The commissioners court of any county, on written
1-48 approval of a judge of the juvenile court of a county or a county
1-49 court, statutory county court, or district court trying criminal
1-50 cases in the county, may appoint a governmental entity, nonprofit
1-51 corporation, or bar association to operate a managed assigned
1-52 counsel program. The commissioners courts of two or more counties
1-53 may enter into a written agreement to jointly appoint and fund a
1-54 governmental entity, nonprofit corporation, or bar association to
1-55 operate a managed assigned counsel program. In appointing an
1-56 entity to operate a managed assigned counsel program under this
1-57 subsection, the commissioners court shall specify or the
1-58 commissioners courts shall jointly specify:

1-59 (1) the types of cases in which the program may appoint
1-60 counsel under Article 26.04 or Section 51.10, Family Code, and the
1-61 courts in which the counsel appointed by the program may be required
1-62 to appear; and

1-63 (2) the term of any agreement establishing a program
1-64 and how the agreement may be terminated or renewed.

2-1 (c) The commissioners court or commissioners courts shall
2-2 require a written plan of operation from an entity operating a
2-3 program under this article. The plan of operation must include:
2-4 (1) a budget for the program, including salaries;
2-5 (2) a description of each personnel position,
2-6 including the program's director;
2-7 (3) the maximum allowable caseload for each attorney
2-8 appointed by the program;
2-9 (4) provisions for training personnel of the program
2-10 and attorneys appointed under the program;
2-11 (5) a description of anticipated overhead costs for
2-12 the program;
2-13 (6) a policy regarding licensed investigators and
2-14 expert witnesses used by attorneys appointed under the program;
2-15 (7) a policy to ensure that appointments are
2-16 reasonably and impartially allocated among qualified attorneys;
2-17 and
2-18 (8) a policy to ensure that an attorney appointed
2-19 under the program does not accept appointment in a case that
2-20 involves a conflict of interest for the attorney that has not been
2-21 waived by all affected clients.
2-22 (d) A program under this article must have a director.
2-23 Unless the program uses a review committee appointed under
2-24 Subsection (e), a program under this article must be directed by a
2-25 person who:
2-26 (1) is a member of the State Bar of Texas;
2-27 (2) has practiced law for at least three years; and
2-28 (3) has substantial experience in the practice of
2-29 criminal law.
2-30 (e) The governmental entity, nonprofit corporation, or bar
2-31 association appointed under Subsection (b) may appoint a review
2-32 committee of three or more individuals to appoint attorneys to the
2-33 program's public appointment list described by Subsection (f).
2-34 Each member of the committee:
2-35 (1) must meet the requirements described by Subsection
2-36 (d);
2-37 (2) may not be employed as a prosecutor; and
2-38 (3) may not be included on or apply for inclusion on
2-39 the public appointment list described by Subsection (f).
2-40 (f) The program's public appointment list from which an
2-41 attorney is appointed must contain the names of qualified
2-42 attorneys, each of whom:
2-43 (1) applies to be included on the list;
2-44 (2) meets any applicable requirements specified by the
2-45 procedure for appointing counsel adopted under Article 26.04(a) and
2-46 the Task Force on Indigent Defense; and
2-47 (3) is approved by the program director or review
2-48 committee, as applicable.
2-49 (g) A court may replace an attorney appointed by the program
2-50 for the same reasons and in the same manner described by Article
2-51 26.04(k).
2-52 (h) A managed assigned counsel program is entitled to
2-53 receive funds for personnel costs and expenses incurred in amounts
2-54 fixed by the commissioners court and paid out of the appropriate
2-55 county fund, or jointly fixed by the commissioners courts and
2-56 proportionately paid out of each appropriate county fund if the
2-57 program serves more than one county.
2-58 (i) A managed assigned counsel program may employ personnel
2-59 and enter into contracts necessary to perform the program's duties
2-60 as specified by the commissioners court or commissioners courts
2-61 under this article.
2-62 SECTION 3. Subsection (c), Article 26.05, Code of Criminal
2-63 Procedure, is amended to read as follows:
2-64 (c) Each fee schedule adopted shall state reasonable fixed
2-65 rates or minimum and maximum hourly rates, taking into
2-66 consideration reasonable and necessary overhead costs and the
2-67 availability of qualified attorneys willing to accept the stated
2-68 rates, and shall provide a form for the appointed counsel to itemize
2-69 the types of services performed. No payment shall be made under

3-1 this article until the form for itemizing the services performed is
3-2 submitted to the judge presiding over the proceedings or, if the
3-3 county operates a managed assigned counsel program under Article
3-4 26.047, the director of the program, and the judge or director, as
3-5 applicable, approves the payment. If the judge or director
3-6 disapproves the requested amount of payment, the judge or director
3-7 shall make written findings stating the amount of payment that the
3-8 judge or director approves and each reason for approving an amount
3-9 different from the requested amount. An attorney whose request for
3-10 payment is disapproved or is not otherwise acted on by the 60th day
3-11 after the date the request for payment is submitted may appeal the
3-12 disapproval or failure to act by filing a motion with the presiding
3-13 judge of the administrative judicial region. On the filing of a
3-14 motion, the presiding judge of the administrative judicial region
3-15 shall review the disapproval of payment or failure to act and
3-16 determine the appropriate amount of payment. In reviewing the
3-17 disapproval or failure to act, the presiding judge of the
3-18 administrative judicial region may conduct a hearing. Not later
3-19 than the 45th day after the date an application for payment of a fee
3-20 is submitted under this article, the commissioners court shall pay
3-21 to the appointed counsel the amount that is approved by the
3-22 presiding judge of the administrative judicial region and that is
3-23 in accordance with the fee schedule for that county.

3-24 SECTION 4. Section 71.001, Government Code, is amended by
3-25 adding Subdivision (8-a) to read as follows:

3-26 (8-a) "Managed assigned counsel program" has the
3-27 meaning assigned by Article 26.047, Code of Criminal Procedure.

3-28 SECTION 5. Subsection (a), Section 71.060, Government Code,
3-29 is amended to read as follows:

3-30 (a) The Task Force on Indigent Defense shall develop
3-31 policies and standards for providing legal representation and other
3-32 defense services to indigent defendants at trial, on appeal, and in
3-33 postconviction proceedings. The policies and standards may
3-34 include:

3-35 (1) performance standards for counsel appointed to
3-36 represent indigent defendants;

3-37 (2) qualification standards under which attorneys may
3-38 qualify for appointment to represent indigent defendants,
3-39 including:

3-40 (A) qualifications commensurate with the
3-41 seriousness of the nature of the proceeding;

3-42 (B) qualifications appropriate for
3-43 representation of mentally ill defendants and noncitizen
3-44 defendants;

3-45 (C) successful completion of relevant continuing
3-46 legal education programs approved by the council; and

3-47 (D) testing and certification standards;

3-48 (3) standards for ensuring appropriate appointed
3-49 caseloads for counsel appointed to represent indigent defendants;

3-50 (4) standards for determining whether a person accused
3-51 of a crime or juvenile offense is indigent;

3-52 (5) policies and standards governing the organization
3-53 and operation of an assigned counsel program;

3-54 (6) policies and standards governing the organization
3-55 and operation of a public defender consistent with recognized
3-56 national policies and standards;

3-57 (7) standards for providing indigent defense services
3-58 under a contract defender program consistent with recognized
3-59 national policies and standards;

3-60 (8) standards governing the reasonable compensation
3-61 of counsel appointed to represent indigent defendants;

3-62 (9) standards governing the availability and
3-63 reasonable compensation of providers of indigent defense support
3-64 services for counsel appointed to represent indigent defendants;

3-65 (10) standards governing the operation of a legal
3-66 clinic or program that provides legal services to indigent
3-67 defendants and is sponsored by a law school approved by the supreme
3-68 court;

3-69 (11) policies and standards governing the appointment

4-1 of attorneys to represent children in proceedings under Title 3,
4-2 Family Code; ~~and~~
4-3 (12) policies and standards governing the
4-4 organization and operation of a managed assigned counsel program
4-5 consistent with nationally recognized policies and standards; and
4-6 (13) other policies and standards for providing
4-7 indigent defense services as determined by the task force to be
4-8 appropriate.

4-9 SECTION 6. This Act takes effect September 1, 2011.

* * * * *

4-10